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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DOMINIC MARTINI,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
  
Defendant.

Case No. ED CV 17-00408-RAO

**MEMORANDUM OPINION AND  
ORDER**

**I. INTRODUCTION**

Plaintiff Dominic Martini (“Plaintiff”) challenges the Commissioner’s denial of his application for a period of disability and disability insurance benefits (“DIB”). For the reasons stated below, the decision of the Commissioner is AFFIRMED.

**II. PROCEEDINGS BELOW**

On January 16, 2013, Plaintiff filed a Title II application for DIB alleging disability beginning October 20, 2012. (Administrative Record (“AR”) 65-66.) His application was denied initially on July 2, 2013, and upon reconsideration on January 2, 2014. (AR 97, 103.) On February 4, 2014, Plaintiff filed a written

1 request for hearing, and a hearing was held on September 29, 2015. (AR 32, 109.)  
2 Represented by counsel, Plaintiff appeared and testified, along with a medical  
3 expert and an impartial vocational expert. (AR 34-64.) On November 13, 2015,  
4 the Administrative Law Judge (“ALJ”) found that Plaintiff had not been under a  
5 disability, pursuant to the Social Security Act,<sup>1</sup> from October 20, 2012 through the  
6 date of decision. (AR 26.) The ALJ’s decision became the Commissioner’s final  
7 decision when the Appeals Council denied Plaintiff’s request for review. (AR 1-3.)  
8 Plaintiff filed this action on March 3, 2017. (Dkt. No. 1.)

9 The ALJ followed a five-step sequential evaluation process to assess whether  
10 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,  
11 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff did not engage in  
12 substantial gainful activity since October 20, 2012, his alleged onset date (“AOD”).  
13 (AR 16.) At **step two**, the ALJ found that Plaintiff has the following severe  
14 impairments: obesity; syndactyly of the fingers; essential hypertension;  
15 strain/sprain of the left knee and left shoulder; and degenerative disc disease of the  
16 cervical spine. (*Id.*) At **step three**, the ALJ found that Plaintiff “does not have an  
17 impairment or combination of impairments that meets or medically equals the  
18 severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix  
19 1.” (AR 18.)

20 Before proceeding to step four, the ALJ found that Plaintiff has the residual  
21 functional capacity (“RFC”) to:

22 [P]erform medium work ... involving sitting 6 hours,  
23 standing/walking 6 hours, occasionally lifting 50 pounds, and  
24 frequently lifting 25 pounds in an 8-hour workday. He can frequently  
25 climb stairs/ramps, but only occasionally climb  
ladders/ropes/scaffolds. The claimant can occasionally balance and

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26 <sup>1</sup> Persons are “disabled” for purposes of receiving Social Security benefits if they  
27 are unable to engage in any substantial gainful activity owing to a physical or  
28 mental impairment expected to result in death, or which has lasted or is expected to  
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 stoop, and frequently kneel, crouch, and crawl. He can frequently use  
2 the bilateral upper extremities for gross and fine manipulation.

3 (*Id.*)

4 At **step four**, based on Plaintiff's RFC and the vocational expert's testimony,  
5 the ALJ found that Plaintiff was capable of performing past relevant work as a  
6 truck driver. (AR 25.) Accordingly, the ALJ found that Plaintiff had not been  
7 under a disability from the AOD through the date of decision, and thus the ALJ did  
8 not proceed to **step five**. (AR 26.)

### 9 **III. STANDARD OF REVIEW**

10 Under 42 U.S.C. § 405(g), a district court may review the Commissioner's  
11 decision to deny benefits. A court must affirm an ALJ's findings of fact if they are  
12 supported by substantial evidence and if the proper legal standards were applied.  
13 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). "'Substantial evidence'  
14 means more than a mere scintilla, but less than a preponderance; it is such relevant  
15 evidence as a reasonable person might accept as adequate to support a conclusion."  
16 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*  
17 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial  
18 evidence requirement "by setting out a detailed and thorough summary of the facts  
19 and conflicting clinical evidence, stating his interpretation thereof, and making  
20 findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

21 "[T]he Commissioner's decision cannot be affirmed simply by isolating a  
22 specific quantum of supporting evidence. Rather, a court must consider the record  
23 as a whole, weighing both evidence that supports and evidence that detracts from  
24 the Secretary's conclusion." *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.  
25 2001) (citations and internal quotation marks omitted). "'Where evidence is  
26 susceptible to more than one rational interpretation,' the ALJ's decision should be  
27 upheld." *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing  
28 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); see *Robbins*, 466 F.3d at

1 882 (“If the evidence can support either affirming or reversing the ALJ’s  
2 conclusion, we may not substitute our judgment for that of the ALJ.”). The Court  
3 may review only “the reasons provided by the ALJ in the disability determination  
4 and may not affirm the ALJ on a ground upon which he did not rely.” *Orn v.*  
5 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d  
6 871, 874 (9th Cir. 2003)).

#### 7 **IV. DISCUSSION**

8 Plaintiff raises the following issues for review: (1) whether the ALJ properly  
9 considered the relevant medical evidence of record and whether the RFC  
10 assessment is supported by substantial evidence; and (2) whether the ALJ properly  
11 considered Plaintiff’s subjective complaints and testimony. (Joint Stipulation  
12 (“JS”) 3, Dkt. No. 21.) Plaintiff contends that the ALJ failed to consider the  
13 combination of his impairments, erred in formulating the RFC, and improperly  
14 discredited Plaintiff’s subjective testimony. (JS 5, 9, 16-17.)<sup>2</sup> The Commissioner  
15 contends that the ALJ properly considered all evidence and provided multiple  
16 permissive reasons to discount Plaintiff’s credibility. (JS 20, 25.) For the reasons  
17 below, the Court agrees with the Commissioner.

##### 18 **A. The ALJ’s Credibility Determination Is Supported By Substantial** 19 **Evidence**<sup>3</sup>

20 Plaintiff argues that the ALJ failed to properly consider his subjective  
21 statements and failed to provide clear and convincing reasons for rejecting his  
22 testimony. (JS 10, 16.) The Commissioner disagrees. (*See* JS 25-31.)

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25 <sup>2</sup> The Joint Stipulation is not consecutively paginated. For ease of reference, the  
26 Court uses the pagination automatically generated by the Court’s electronic docket.

27 <sup>3</sup> Because subjective symptom testimony is one factor that the ALJ must consider  
28 when assessing a claimant’s RFC, the Court addresses the issue of credibility first  
before discussing the overall RFC determination.

1                   **1. Plaintiff's Testimony**

2           At the administrative hearing, Plaintiff stated that he had completed eleventh  
3 grade and pursued automotive studies at a community college. (AR 37.) Plaintiff  
4 last worked on June 4, 2012 as a construction equipment truck driver. (AR 38.) At  
5 that job, Plaintiff lifted chains and binders that weighed 20 or 25 pounds. (*Id.*)  
6 Plaintiff had been a truck driver at various companies since at least 1999. (AR 39.)

7           Plaintiff testified that he cannot work due to pain in his hands, which he has  
8 had for about 10 years. (AR 40.) Plaintiff described feeling “bone on bone” when  
9 he touches things. (*Id.*) He stated that he has arthritis, bone spurs in his hands and  
10 neck, and “[a] lot of pain” in his neck and back. (*Id.*)

11           On a zero-to-ten pain scale, Plaintiff assigned a ten to the pain in his right  
12 hand. (*Id.*) Plaintiff takes gabapentin and duloxetine, which helps his pain level.  
13 (*Id.*) Plaintiff stated that his pain level is below a ten when he is asleep, but “it  
14 always hurts if [he] touch[es] something.” (*Id.*) Plaintiff then agreed that his pain  
15 is a constant ten even with pain medication. (AR 41.)

16           Plaintiff assigned a nine to the pain in his left hand, and he stated that the  
17 pain goes down to an eight-and-a-half with medication. (*Id.*) He explained that the  
18 medication “doesn’t help much,” but he does not have pain as long as he does not  
19 move or touch anything. (*Id.*) Without medication, Plaintiff has pain, throbbing,  
20 and numbness even if he does not move. (*Id.*)

21           Plaintiff is seeing a doctor who gives him nerve blockers and cervical  
22 epidurals to treat his hand pain. (AR 45.) The treatments make his hands numb  
23 and take away the pain for two weeks. (*Id.*) Plaintiff is right-handed, and he can  
24 hold a pen or pencil with two fingers, but not without pain. (AR 41.) When using  
25 his right hand, Plaintiff cannot write a page, hold items like water glasses, open  
26 jars, or fasten buttons, but he can open a doorknob. (AR 41-42.) With his left  
27 hand, Plaintiff cannot hold a pen or pencil, but he can hold water glasses without a  
28 handle by using an open hand. (AR 42.) Plaintiff can dress himself if he does not

1 need to tie shoelaces, he can fasten one button on his pants, and he can operate a  
2 zipper. (AR 42-43.)

3 Plaintiff described occasional difficulty bathing or showering due to  
4 problems with his left shoulder. (AR 43.) Plaintiff explained that he injured his  
5 left shoulder seven years ago when he fell down a ladder. (*Id.*) He rated the pain in  
6 his shoulder as a seven and stated that he cannot raise his left arm to or above his  
7 shoulder level without pain. (AR 43-44.) An arthritis doctor gave Plaintiff the  
8 option of having surgery on his shoulder, which he declined. (AR 55-56.) Plaintiff  
9 also has neck problems from whiplash in a car accident about 10 or 15 years ago,  
10 for which he has received chiropractic treatment. (AR 44.) Plaintiff assigned a five  
11 to his neck pain and explained that he has difficulty looking up and to the right.  
12 (AR 44-45.) Plaintiff stated that medication does not help his shoulder or neck  
13 pain. (AR 43-44.)

14 Plaintiff testified that he has difficulty sitting due to pain in his left knee,  
15 which he rated as an eight. (AR 45-46.) Plaintiff has pain “[a]ll the time,” and  
16 medication does not help. (*Id.*) Plaintiff can sit for 15 minutes before he needs to  
17 adjust his leg or lower back through stretching or standing up. (AR 46.) Plaintiff  
18 can stand for five minutes before he has knee pain. (AR 46-47.) Plaintiff can walk  
19 for 15 minutes. (AR 47.) He wears a brace on his left knee daily, when his left  
20 knee gets swollen after walking. (*Id.*) Plaintiff has a cane, but he does not use it  
21 because his left hand cannot hold it. (*Id.*) Surgery was suggested after he injured  
22 his knee in 1996, but Plaintiff declined it. (AR 56.)

23 Plaintiff also has hour-long spasms in his lower and middle back every day.  
24 (AR 47-48.) When he has a spasm, he needs to “get up and move” and cannot stay  
25 in one position. (AR 48.)

26 Plaintiff does not drive because “[i]t hurts to drive a vehicle.” (*Id.*) Plaintiff  
27 has other people drive him places; his parents drove him to the hearing. (*Id.*) They  
28 did not stop during the drive, which took an hour and forty-five minutes. (*Id.*)

1 Plaintiff is currently homeless, but he has a temporary room at his parents'  
2 house. (AR 49.) Plaintiff has lived with his parents since July, but he does not plan  
3 to live there indefinitely. (*Id.*) He does not do laundry, and his mother does all the  
4 cooking. (AR 49.) Plaintiff goes grocery shopping “[j]ust for little things, like  
5 packages of hot dogs.” (*Id.*)

6 Plaintiff stated that he wakes up in pain two or three times every night, and  
7 he does not feel rested in the morning. (*Id.*) Plaintiff lies in bed and rests during  
8 the day. (*Id.*) If Plaintiff stays in bed too long, he wakes up “very stiff,” so he  
9 doesn’t stay in bed more than a half hour. (*Id.*)

10 Plaintiff sees a psychiatrist or psychologist once every three months at his  
11 primary doctor’s recommendation. (AR 50.) Plaintiff receives “verbal treatment”  
12 and answers the doctor’s questions. (*Id.*) Plaintiff testified that he is depressed and  
13 feels like he needs someone to speak to. (*Id.*) Plaintiff cries about once a week.  
14 (*Id.*) Plaintiff denied having friends to socialize with, and he denied going to  
15 movies, shows, or other entertainment. (*Id.*) Plaintiff also denied belonging to any  
16 clubs, social organizations, or religious organizations. (AR 51.) Plaintiff does not  
17 watch television or do any other activities other than getting up and lying in bed.  
18 (AR 52.)

19 Plaintiff’s doctor stopped prescribing medication while Plaintiff tried using  
20 medical marijuana for two months. (AR 51.) Plaintiff had previously been  
21 prescribed Norco and Tramadol. (AR 54-55.) Plaintiff stated that the medical  
22 marijuana made him “more relaxed” and he “didn’t really mind being in pain.”  
23 (AR 52.) Plaintiff stopped using medical marijuana about four months before the  
24 hearing and has been waiting to get an appointment with another pain specialist.  
25 (AR 51.) Plaintiff stopped using medical marijuana so he could get prescription  
26 narcotics. (AR 55.)

27 Plaintiff stated that he was still married, but did not know if his wife had filed  
28 for divorce. (AR 52.) He last saw his wife in June, about three months before the

1 hearing, after she asked him to leave and they packed up his belongings. (*Id.*)  
2 Plaintiff has one adult child, who he sees occasionally for brief visits. (AR 53.)

## 3                   **2.     Applicable Legal Standards**

4            “In assessing the credibility of a claimant’s testimony regarding subjective  
5 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*  
6 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d  
7 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has  
8 presented objective medical evidence of an underlying impairment which could  
9 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler*  
10 *v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting  
11 *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the  
12 ALJ does not find evidence of malingering, the ALJ must provide specific, clear  
13 and convincing reasons for rejecting a claimant’s testimony regarding the severity  
14 of his symptoms. *Id.* The ALJ must identify what testimony was found not  
15 credible and explain what evidence undermines that testimony. *Holohan v.*  
16 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). “General findings are  
17 insufficient.” *Lester*, 81 F.3d at 834.

## 18                   **3.     Discussion**

19            “After careful consideration of the evidence,” the ALJ found that Plaintiff’s  
20 “medically determinable impairments could reasonably be expected to cause the  
21 alleged symptoms,” but found that Plaintiff’s “statements concerning the intensity,  
22 persistence and limiting effects of these symptoms are not entirely credible.” (AR  
23 19.) The ALJ relied on the following reasons: (1) activities of daily living;  
24 (2) inconsistent statements; and (3) lack of objective medical evidence to support  
25 the alleged severity of symptoms. (AR 16-17.) No malingering allegation was  
26 made, and therefore, the ALJ’s reasons must be “clear and convincing.”

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1                                   **a. Reason No. 1: Activities of Daily Living**

2           The ALJ found that Plaintiff's "regular activities contradict several of his  
3 reported problems and show he is more capable than he alleged." (AR 20.)

4           Inconsistencies between symptom allegations and daily activities may act as  
5 a clear and convincing reason to discount a claimant's credibility, *see Tommasetti v.*  
6 *Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008); *Bunnell v. Sullivan*, 947 F.2d 341, 346  
7 (9th Cir. 1991), but a claimant need not be utterly incapacitated to obtain benefits.  
8 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). "If a claimant is able to spend a  
9 substantial part of his day engaged in pursuits involving the performance of  
10 physical functions that are transferable to a work setting, a specific finding as to this  
11 fact may be sufficient to discredit a claimant's allegations." *Morgan v. Comm'r of*  
12 *Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999); *accord Vertigan v. Halter*, 260  
13 F.3d 1044, 1050 (9th Cir. 2001).

14           The fact that Plaintiff fed and walked his dog, took care of his personal care  
15 with some difficulty, prepared meals, performed minor chores, shopped, rode a  
16 motorcycle, participated in hobbies, and could manage money does not detract from  
17 his overall credibility, as the record does not show that this consumed a substantial  
18 part of Plaintiff's day. *See Vertigan*, 260 F.3d at 1049-50 (holding that a claimant's  
19 ability to "go grocery shopping with assistance, walk approximately an hour in the  
20 malls, get together with her friends, play cards, swim, watch television, and read . . .  
21 does not in any way detract from her credibility as to her overall disability"). In his  
22 Function Report, Plaintiff stated that he spent one hour vacuuming and 20 minutes  
23 doing outside work. (AR 195.) He also spent one hour shopping every two weeks.  
24 (AR 196.) Further, the ability to perform some tasks is not necessarily indicative of  
25 an ability to perform work activities because "many home activities are not easily  
26 transferable to what may be the more grueling environment of the workplace, where  
27 it might be impossible to periodically rest or take medication." *Fair*, 885 F.2d at  
28 603; *see also Molina*, 674 F.3d at 1112-13 (the ALJ may discredit a claimant who

1 “participat[es] in everyday activities indicating capacities that are transferable to a  
2 work setting”). The critical difference between such activities “and activities in a  
3 full-time job are that a person has more flexibility in scheduling the former . . . , can  
4 get help from other persons . . . , and is not held to a minimum standard of  
5 performance, as she would be by an employer.” *Bjornson v. Astrue*, 671 F.3d 640,  
6 647 (7th Cir. 2012) (cited with approval in *Garrison v. Colvin*, 759 F.3d 995, 1016  
7 (9th Cir. 2014)). Indeed, Plaintiff stated in his Function Report that his wife helped  
8 him care for the pets, and he needed his wife to accompany him places. (AR 194,  
9 197.) Plaintiff also stated that his wife would remind him to take care of his  
10 personal needs and grooming. (AR 195.) But by his September 2015 hearing,  
11 Plaintiff was no longer living with his wife. (AR 52.)

12 The Court finds that this reason is not a clear and convincing reason,  
13 supported by substantial evidence, to discount Plaintiff’s credibility.

#### 14 **b. Reason No. 2: Inconsistent Statements**

15 The ALJ also found other inconsistencies between the Function Report and  
16 Plaintiff’s alleged limitations. As part of the credibility determination, the ALJ  
17 may consider inconsistencies between the claimant’s testimony and his other  
18 statements, conduct, and daily activities. *See Light v. Soc. Sec. Admin.*, 119 F.3d  
19 789, 792 (9th Cir. 1997); *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir.  
20 2001).

21 The ALJ observed that Plaintiff’s “ability to complete a 9-page Function  
22 Report in his own handwriting” did not support his allegations of “difficulty using  
23 his hands, grasping objects, and performing fine manipulations.” (AR 20.)  
24 Plaintiff testified that he struggled to hold a pen or pencil and could not write a  
25 page. (AR 41.) Although Plaintiff argues that the record does not reveal how long  
26 it took Plaintiff to complete his Function Report (JS 12), the ALJ was permitted to  
27 consider this discrepancy between Plaintiff’s testimony and his demonstrated  
28 conduct. *See Light*, 119 F.3d at 792; *see also Ryan*, 528 F.3d at 1198 (“Where

1 evidence is susceptible to more than one rational interpretation,’ the ALJ’s decision  
2 should be upheld.”). Next, the ALJ noted that Plaintiff reported that he could walk  
3 for up to a mile, “despite allegations of knee pain causing difficulty walking.” (AR  
4 20; *see* AR 198.) The ALJ also noted that, “contrary to his alleged social  
5 limitations,” Plaintiff “admitted spending time with his wife, going to the park, and  
6 going shopping,” and “denied having problems getting along with others and said  
7 he got along well with authority figures.” (AR 20; *see* AR 198-99.) The ALJ  
8 properly considered these discrepancies between Plaintiff’s alleged limitations and  
9 his self-reported activities. *See Berry v. Astrue*, 622 F.3d 1228, 1234-35 (9th Cir.  
10 2010) (affirming an adverse credibility determination when a claimant’s self-  
11 reported activities contradicted the claimant’s alleged functional limitations).

12 The Court finds that this reason is a clear and convincing reason, supported  
13 by substantial evidence, to discount Plaintiff’s credibility.

14 **c. Reason No. 3: Lack of Supporting Objective Medical**  
15 **Evidence**

16 The ALJ found that “[t]he objective medical evidence fails to provide strong  
17 support for the claimant’s allegations of disabling symptoms and limitations.” (AR  
18 20.) The lack of supporting objective medical evidence cannot form the sole basis  
19 for discounting testimony, but it is a factor that the ALJ may consider in making a  
20 credibility determination. *Burch*, 400 F.3d at 681; *Rollins v. Massanari*, 261 F.3d  
21 853, 857 (9th Cir. 2001) (citing 20 C.F.R. § 404.1529(c)(2)).

22 Regarding Plaintiff’s hand and shoulder impairments, the ALJ noted that  
23 medical records confirmed contracture of the fourth and fifth fingers before the  
24 AOD. (*Id.*; *see* AR 332, 407.) In June 2012, Plaintiff exhibited discomfort in his  
25 third and fourth fingers, reported “a lot of pain in his hands,” and wondered how  
26 long he could continue his current work. (AR 20, 320-21.) About one month after  
27 the AOD, in November 2012, Plaintiff was treated in the emergency room for  
28 chronic pain in both hands and left shoulder pain. (AR 20, 288, 290.) In December

1 2012, Plaintiff was diagnosed with ulnar nerve entrapment at the wrist, which was  
2 treated with a wrist splint and medication. (AR 20, 310, 315.) Plaintiff underwent  
3 an orthopedic consultation in May 2013, which revealed scarring and joint changes  
4 due to syndactyly, some deformities of the PIP and DIP joints, no loss of sensation,  
5 normal motor strength bilaterally, normal deep tendon reflexes, normal and painless  
6 range of motion in his wrists and elbows, normal pulses, and negative Tinel's sign  
7 over the ulnar nerve at the cubital tunnel. (AR 22, 370-71.) Plaintiff's grip strength  
8 was measured as 20-40 pounds with his right hand and 20-30 pounds with his left  
9 hand. (AR 22, 369.) Plaintiff also had generalized mild tenderness and pain  
10 through the range of motion in his left shoulder, but his shoulder was otherwise  
11 unremarkable. (AR 22, 370.) X-rays in July 2013 showed deformity of the fourth  
12 middle phalanx, flexion deformity of the fourth digit, and mild flexion deformity of  
13 the third phalanx on Plaintiff's right hand. (AR 22, 388-89.) Plaintiff also had  
14 ankyloses of the fourth PIP joint and severe joint space narrowing of the fourth  
15 DIP joint with marginal osteophytosis and flexion deformity in his left hand. (*Id.*)  
16 The x-rays of Plaintiff's wrists were unremarkable. (AR 22, 433-34.) Plaintiff was  
17 treated at Neighborhood Healthcare beginning in July 2013, where he was treated  
18 for chronic pain but was noted to be "in no acute distress." (AR 23; *see, e.g.*, AR  
19 399-409.) In December 2013, Plaintiff complained of chronic pain in his fingers  
20 and hand numbness that radiated up both arms. (AR 23, 507-08.) An  
21 electrodiagnostic/nerve conduction consultation revealed no evidence of peripheral  
22 neuropathy, cervical radiculopathy, or peripheral impingement in the median, ulnar,  
23 or radial nerves. (AR 23, 425-26.) Between January 2014 and June 2014,  
24 Plaintiff's condition did not significantly change, and he was treated with  
25 medication. (AR 23; *see, e.g.*, AR 421-22, 516-17.) In February 2014, Plaintiff  
26 was prescribed a Medrol Dosepak; he reported only 15% relief from this  
27 medication. (AR 23, 418-20.) No orthopedic source of Plaintiff's problems could  
28 be identified, and it was recommended that Plaintiff see a rheumatologist. (AR 23,

1 418.) Plaintiff also tried medications for neurologic symptoms and underwent more  
2 testing, which was unsuccessful at diagnosing or alleviating Plaintiff's symptoms.  
3 (AR 23, 443.) A February 2014 x-ray of Plaintiff's left shoulder was unremarkable.  
4 (AR 23, 517.) An April 2014 rheumatology consultation revealed slightly limited  
5 rotation of the neck, flexion at multiple IPs on prayer sign, poor finger curl, poor  
6 grip, multiple deformities and abnormalities of the bilateral fingers, negative  
7 Tinel's signs, and wrists that were relatively well preserved and without pain. (AR  
8 23-24, 539-44.) Plaintiff's deep tendon reflexes were symmetric and his shoulders  
9 were unremarkable. (*Id.*) Plaintiff was diagnosed with osteoarthritis and left lateral  
10 epicondylitis, which was confirmed in a June 2014 x-ray. (AR 24, 516, 543.)

11       Regarding Plaintiff's back impairment, a May 2013 orthopedic evaluation  
12 revealed normal range of motion of the cervical spine with pain at the extremes and  
13 minimal tenderness of the paracervical muscles. (AR 369.) Plaintiff was observed  
14 to sit comfortably. (*Id.*) Plaintiff began reporting back pain at Neighborhood  
15 Healthcare in July 2013, but no significant findings were made. (AR 23, 403.) July  
16 2013 x-rays of the cervical spine were normal. (AR 22, 432.)

17       Regarding Plaintiff's knee impairment, a May 2013 orthopedic evaluation  
18 revealed a normal gait and no limp. (AR 22, 369.) In October 2013, Plaintiff  
19 reported injuring his left calf; he was provided with a cane and anti-inflammatory  
20 medication. (AR 23, 391, 397-98.) Plaintiff complained of knee pain during his  
21 treatment at Neighborhood Healthcare, but no significant findings were made. (AR  
22 23; *see, e.g.*, AR 458, 461, 468, 498.) A February 2014 x-ray of the left knee  
23 revealed osteoarthritis. (AR 23, 518.)

24       From August 2014 to May 2015, Plaintiff had a positive response to  
25 treatment with epidural steroid injections, nerve blocks, and other medications.  
26 (AR 24; *see, e.g.*, 547, 555, 559, 571, 629, 632, 635, 647.)

27       The ALJ thoroughly considered Plaintiff's medical records and found that  
28 they did not support Plaintiff's allegations of disabling symptoms and limitations.

1 *See Reddick*, 157 F.3d at 725. The ALJ was permitted to rely on the normal  
2 examination results and lack of significant medical findings in assessing the  
3 credibility of Plaintiff's testimony. *See Garza v. Astrue*, 380 F. App'x 672, 674  
4 (9th Cir. 2010) (finding that an ALJ properly considered a claimant's normal exam  
5 findings when noting a lack of objective medical evidence to support the claimant's  
6 allegations).

7 The Court finds that this is a clear and convincing reason, supported by  
8 substantial evidence, for discounting Plaintiff's credibility.

#### 9 **4. Conclusion**

10 Because the Court found that one of the ALJ's reasons for discounting  
11 Plaintiff's credibility—activities of daily living—is not clear and convincing, the  
12 Court must decide whether the ALJ's reliance on that reason was harmless error.  
13 *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008).  
14 The relevant inquiry "is not whether the ALJ would have made a different decision  
15 absent any error," but whether the ALJ's decision is still "legally valid, despite such  
16 error." *Id.* The "remaining reasoning *and ultimate credibility determination* [must  
17 be] . . . supported by substantial evidence in the record." *Id.* (emphasis in original)  
18 (citing *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir.  
19 2004)). Here, given the discussion above concerning Plaintiff's inconsistent  
20 statements and the lack of supporting objective evidence, the Court concludes the  
21 ALJ's credibility finding is legally valid and supported by substantial evidence.  
22 *See Garza*, 380 F. App'x at 673 (finding that contradictions created by inconsistent  
23 statements and a lack of objective medical evidence constituted substantial  
24 evidence to discount credibility, despite finding that the ALJ's other reasons were  
25 not clear and convincing).

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1           **B. The ALJ Properly Considered the Medical Evidence When**  
2           **Formulating Plaintiff's RFC**

3           Plaintiff contends that the ALJ failed to properly consider his combination of  
4           impairments and erred in assessing Plaintiff's RFC. (*See* JS 5, 9-10.) The  
5           Commissioner contends that the ALJ properly considered all the evidence. (*See* JS  
6           20, 24-25.)

7                   **1. Applicable Legal Standards**

8           The ALJ is responsible for assessing a claimant's RFC "based on all of the  
9           relevant medical and other evidence." 20 CFR § 404.1545(a)(3), 404.1546(c); *see*  
10          *Robbins*, 466 F.3d at 883 (citing Soc. Sec. Ruling 96-8p (July 2, 1996), 1996 WL  
11          374184, at \*5). In doing so, the ALJ may consider any statements provided by  
12          medical sources, including statements that are not based on formal medical  
13          examinations. *See* 20 CFR § 404.1513(a), 404.1545(a)(3). An ALJ's  
14          determination of a claimant's RFC must be affirmed "if the ALJ applied the proper  
15          legal standard and his decision is supported by substantial evidence." *Bayliss v.*  
16          *Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005); *accord Morgan*, 169 F.3d at 599.

17          Courts give varying degrees of deference to medical opinions based on the  
18          provider: (1) treating physicians who examine and treat; (2) examining physicians  
19          who examine, but do not treat; and (3) non-examining physicians who do not  
20          examine or treat. *Valentine v. Comm'r, Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th  
21          Cir. 2009). Most often, the opinion of a treating physician is given greater weight  
22          than the opinion of a non-treating physician, and the opinion of an examining  
23          physician is given greater weight than the opinion of a non-examining physician.  
24          *See Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).

25          The ALJ must provide "clear and convincing" reasons to reject the ultimate  
26          conclusions of a treating or examining physician. *Embrey v. Bowen*, 849 F.2d 418,  
27          422 (9th Cir. 1988); *Lester*, 81 F.3d at 830-31. When a treating or examining  
28          physician's opinion is contradicted by another opinion, the ALJ may reject it only

1 by providing specific and legitimate reasons supported by substantial evidence in  
2 the record. *Orn*, 495 F.3d at 633; *Lester*, 81 F.3d at 830; *Carmickle*, 533 F.3d at  
3 1164. A non-examining physician’s opinion can constitute substantial evidence if it  
4 is supported by other evidence in the record and is consistent with it. *Morgan*, 169  
5 F.3d at 600. “An ALJ can satisfy the ‘substantial evidence’ requirement by ‘setting  
6 out a detailed and thorough summary of the facts and conflicting evidence, stating  
7 his interpretation thereof, and making findings.’” *Garrison*, 759 F.3d at 1012  
8 (citation omitted).

9 Other non-medical sources may also provide opinions and testimony  
10 regarding a claimant’s symptoms or the effects of a claimant’s impairments on his  
11 or her ability to work. *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)  
12 (citing *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996)). The ALJ must take  
13 this evidence into account, unless the ALJ “expressly determines to disregard such  
14 testimony, in which case ‘he must give reasons that are germane to each witness.’”  
15 *Nguyen*, 100 F.3d at 1467 (quoting *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir.  
16 1993)); see *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001). Because such  
17 testimony is competent evidence, it “cannot be disregarded without comment.”  
18 *Nguyen*, 100 F.3d at 1467 (emphasis in original).

## 19 **2. Opinion Testimony**

20 Treating physician Thomas E. Rastle, M.D., completed Mental and Physical  
21 Medical Source Statements in March 2013. (AR 20, 356-63.) Dr. Rastle treated  
22 Plaintiff occasionally over the course of five years. (AR 356, 361.) In his Mental  
23 Medical Source Statement, Dr. Rastle indicated that Plaintiff had no psychiatric  
24 condition. (AR 356, 359.) He noted that Plaintiff’s prognosis was “entirely  
25 dependent on hands condition,” and Plaintiff suffered from decreased energy and  
26 sleep disturbance. (AR 356-57.) Dr. Rastle indicated that Plaintiff had “unlimited  
27 or very good” abilities to perform unskilled work, semiskilled and skilled work, and  
28 particular types of jobs. (AR 358-59.) Dr. Rastle also noted that Plaintiff’s



1 psychological condition would not cause him to be absent from work and that his  
2 only impairments were physical. (AR 360.) In his Physical Medical Source  
3 Statement, Dr. Rastle diagnosed Plaintiff with hand pain secondary to arthritis after  
4 hand surgeries for a congenital condition. (AR 361.) Dr. Rastle stated that Plaintiff  
5 had a fair-to-poor prognosis, noting Plaintiff's severe, constant finger pain and  
6 deformities. (AR 361.) Dr. Rastle indicated that Plaintiff required a cane or other  
7 assistive device for occasional standing or walking. (AR 361.) Dr. Rastle opined  
8 that Plaintiff could stand or walk for six hours of an eight-hour workday, sit for  
9 eight hours, never lift or carry any weight, and rarely perform postural activities.  
10 (AR 362.) He also stated that Plaintiff had significant limitations with reaching,  
11 handling, or fingering. (*Id.*) Dr. Rastle determined that Plaintiff could never grasp,  
12 turn, or twist objects; could perform fine manipulations 1% of a working day; could  
13 never reach with his left arm; and could reach with his right arm only 5% of a  
14 working day. (*Id.*) Dr. Rastle noted that Plaintiff's symptoms would constantly  
15 interfere with attention and concentration needed to perform simple work tasks.  
16 (AR 363.) Dr. Rastle also indicated that Plaintiff could tolerate moderate work  
17 stress and would likely be absent from work more than four days per month. (*Id.*)

18 Alan Berkowitz, M.D., performed a psychiatric evaluation in April 2013.  
19 (AR 21, 364-67.) Dr. Berkowitz noted that Plaintiff was given medication for  
20 anxiety, but Plaintiff did not believe that anxiety made him unable to function in the  
21 workplace. (AR 364; *see* AR 365.) Dr. Berkowitz observed that Plaintiff was  
22 polite and engaging, put forth a good effort, had normal and well-organized speech,  
23 made good eye contact, and was completely oriented. (AR 365.) Dr. Berkowitz  
24 noted that Plaintiff had normal memory, intact judgment, and well-organized  
25 thought processes. (AR 365-66.) Plaintiff reported doing light housework,  
26 shopping with his wife, doing laundry and some simple cooking, reading books  
27 daily, paying bills, and light computer use. (AR 366.) Dr. Berkowitz determined  
28 that Plaintiff had no mental functional limitations. (AR 366-67.) During this

1 examination, Plaintiff was also assigned a Global Assessment of Functioning  
2 (“GAF”) score of 65. (AR 366.)

3 Thomas Sabourin, M.D., completed a comprehensive orthopedic evaluation  
4 in May 2013. (AR 22, 368-74.) In his medical source statement, Dr. Sabourin  
5 determined that Plaintiff could lift or carry 20 pounds occasionally and 10 pounds  
6 frequently, stand and walk for six hours of an eight-hour workday, sit for six hours  
7 of an eight-hour workday, and push and pull 50 pounds occasionally and 25 pounds  
8 frequently. (AR 371.) Dr. Sabourin found that Plaintiff has no postural limitations  
9 and can do gross and fine manipulation only frequently. (*Id.*)

10 Dr. Lorber, a Board Certified Orthopedic Surgeon, reviewed the evidence of  
11 record and served as a medical expert during Plaintiff’s hearing. (AR 24, 32-64.)  
12 Dr. Lorber identified obesity and congenital syndactyly with post-surgical  
13 deformities as medically determinable impairments. (AR 57.) Dr. Lorber also  
14 considered Plaintiff’s allegations of cervical spine fracture and left knee injury, but  
15 he did not find any diagnostic findings to support that they were medically  
16 determinable impairments. (AR 58.) Dr. Lorber did not find that Plaintiff’s  
17 impairments, singly or in combination, met or equaled any listed impairments. (AR  
18 57-59.) Dr. Lorber determined that Plaintiff had the capacity to occasionally lift 50  
19 pounds and frequently lift 25 pounds. (AR 59.) Dr. Lorber found no restrictions on  
20 standing or walking and limited Plaintiff to frequent manipulation with his hands.  
21 (*Id.*)

22 State agency medical consultants reviewed Plaintiff’s records initially and  
23 upon reconsideration. (AR 24, 66-77, 79-94.) The consultants determined that  
24 Plaintiff could perform light work, stand or walk for six hours, sit for six hours,  
25 frequently perform postural activities, and frequently perform gross and fine  
26 manipulations. (AR 74-75, 90-92.)

27 State agency psychological consultants also reviewed Plaintiff’s records and  
28 found that Plaintiff had no severe mental impairments. (AR 24, 66-77, 79-94.)

1 Plaintiff's wife, Silvia Martini, completed a Third Party Function Report in  
2 March 2013. (AR 24-25, 208-16.) Mrs. Martini reported that Plaintiff had pain in  
3 his hands and difficulty lifting, squatting, reaching, walking, kneeling, using his  
4 hands, and getting along with others. (AR 208, 211, 213.) She noted that Plaintiff  
5 watched TV, read, did light chores at home, made his bed, cared for the dog,  
6 prepared his own meals, vacuumed, used a leaf blower, went outside three or four  
7 times a week, and could manage money. (AR 209-11.) Mrs. Martini also reported  
8 that Plaintiff got along "very well" with others, handled stress well, and handled  
9 changes in routine very well. (AR 214.)

### 10 **3. Discussion**

11 In determining Plaintiff's RFC, the ALJ "considered all symptoms and the  
12 extent to which these symptoms can reasonably be accepted as consistent with the  
13 objective medical evidence and other evidence . . . [and] also considered opinion  
14 evidence" in accordance with social security regulations. (AR 18.)

15 The ALJ assigned Dr. Rastle's opinions "little weight." (AR 21.) The ALJ  
16 noted that Dr. Rastle "offered no rationale, diagnostic findings, or no clinical  
17 notations for the restrictions." (*Id.*) The ALJ also noted that Dr. Rastle's opinions  
18 were inconsistent between his Mental Medical Source Statement and his Physical  
19 Medical Source Statement. (*Id.*) The ALJ observed that Plaintiff's reported use of  
20 his hands was significantly more than Dr. Rastle's reported 1% to 5% of a workday.  
21 (*Id.*) Accordingly, the ALJ found Dr. Rastle's opinion to be unreliable. (*Id.*) The  
22 Court finds that the ALJ provided specific and legitimate reasons, supported by  
23 substantial evidence, for rejecting Dr. Rastle's opinion. *See Magallanes*, 881 F.2d  
24 at 751 (an ALJ may disregard a treating physician's opinion that is brief,  
25 conclusory, and lacks clinical findings); *Morgan*, 169 F.3d at 603 (the ALJ is  
26 responsible for resolving internal inconsistencies in medical reports and  
27 determining whether these inconsistencies are relevant to discrediting medical  
28 opinions).

1       The ALJ assigned Dr. Berkowitz’s opinion “great weight,” finding it  
2 consistent with clinical findings and Plaintiff’s reports of “mild” symptoms. (AR  
3 21.) However, the ALJ assigned the GAF score from Dr. Berkowitz’s assessment  
4 “little weight.” (AR 22.) The ALJ noted that GAF scores vary widely, are not  
5 standardized or based on normative data, and offer “only a snapshot opinion” about  
6 the level of functioning. (*Id.*) The ALJ also explained that GAF scores are used by  
7 treating clinicians to plan and measure the impact of treatment, and they do not  
8 measure the ability to meet the mental demands of unskilled work. (*Id.*)  
9 Accordingly, the ALJ properly found that the GAF score is not an appropriate  
10 measure of Plaintiff’s functional abilities. *See Chavez v. Astrue*, 699 F. Supp. 2d  
11 1125, 1135 (C.D. Cal. 2009) (finding that the unreliability of GAF scores is a  
12 specific and legitimate reason to reject the scores); *Taylor v. Astrue*, No. EDCV 08-  
13 1708-OP, 2009 WL 4349553, at \*3 (C.D. Cal. Nov. 24, 2009) (same).

14       The ALJ assigned Dr. Sabourin’s opinion “partial weight,” noting that his  
15 assessments of lifting or carrying only 10 to 20 pounds was not consistent with both  
16 the clinical findings and his determination that Plaintiff could push and pull at a  
17 medium level. (AR 22.) The ALJ also found the lack of postural limitations to be  
18 inconsistent with Plaintiff’s obesity. (*Id.*) The ALJ properly rejected these  
19 inconsistent conclusions. *See Tommasetti*, 533 F.3d at 1041 (rejecting opinion  
20 testimony that was inconsistent with medical records). The ALJ also gave “great  
21 weight” to Dr. Sabourin’s opinions about Plaintiff’s ability to manipulate, finding  
22 them consistent with Plaintiff’s chronic hand pain and continued use of his hands  
23 on a daily basis. (AR 22.) The ALJ also found that Dr. Sabourin’s  
24 recommendations about standing, walking, and sitting were consistent with his  
25 findings of normal ambulation and no apparent discomfort while seated. (*Id.*)

26       The ALJ assigned “partial weight” to the opinions of Dr. Lorber and the state  
27 agency medical consultants, noting that they did not have an opportunity to review  
28 all of the evidence. (AR 24.) The ALJ noted that recent records show additional

1 impairments but a positive response to treatment; accordingly, the opinions were  
2 “not a fair assessment of the claimant’s functional limitations.” (*Id.*) Because these  
3 non-examining doctors’ opinions did not take into account the full record, the ALJ  
4 properly discounted their weight. *See Herron v. Astrue*, 407 F. App’x 139, 141 (9th  
5 Cir. 2010) (rejecting an ALJ’s assignment of “great weight” to the opinion of a state  
6 agency consultant who did not review a substantial portion of the relevant medical  
7 evidence).

8 The ALJ properly assigned “great weight” to the opinions of the state agency  
9 psychological consultants, finding the opinions to be consistent with the medical  
10 evidence. (AR 24.) *See Morgan*, 169 F.3d at 600 (“Opinions of a nonexamining,  
11 testifying medical advisor may serve as substantial evidence when they are  
12 supported by other evidence in the record and are consistent with it.”).

13 The ALJ assigned Mrs. Martini’s opinion “little weight,” noting that she is  
14 not a medical expert, her statements are inconsistent with the activities that she  
15 acknowledged that Plaintiff could do, and her opinions are inconsistent with the  
16 objective medical evidence. (AR 25.) These are germane reasons to support  
17 discounting her lay opinion. *See, e.g., Lewis*, 236 F.3d at 511 (“One reason for  
18 which an ALJ may discount lay testimony is that it conflicts with medical  
19 evidence.”).

20 Plaintiff also argues that the ALJ improperly considered the combination of  
21 impairments that affect and limit Plaintiff’s use of his hands and fingers. (JS 5.)  
22 The ALJ found that Plaintiff’s tendonitis, chronic hand pain, diabetes mellitus,  
23 arthritis, degenerative joint disease, and tensor fascia lata syndrome were redundant  
24 or non-severe conditions. (AR 17.) The ALJ noted that these conditions “were  
25 either alternatively diagnosed, managed medically, resolved, or amenable to proper  
26 control” through treatment. (*Id.*) The ALJ also noted that no aggressive treatment  
27 was recommended or anticipated, and several conditions presented only slight  
28 abnormalities with no more than a minimal effect on Plaintiff’s abilities. (*Id.*)

1 Plaintiff relies on Dr. Rastle’s medical source statement and his finding of  
2 “substantial limitations” on Plaintiff’s abilities, as well as Dr. Sabourin’s opinion  
3 about Plaintiff’s functional abilities. (JS 6-9.) But as discussed above, the ALJ  
4 properly gave Dr. Rastle’s opinions little weight and properly rejected Dr.  
5 Sabourin’s opinion that Plaintiff was limited to lifting and carrying 10 to 20  
6 pounds. *See Batson*, 359 F.3d at 1197 (“The ALJ was not required to incorporate  
7 evidence from the opinions of [the claimant]’s treating physicians, which were  
8 permissibly discounted.”). Finally, Plaintiff notes that he “has consistently  
9 maintained throughout this claims process that he is significantly limited in his  
10 ability to use his upper extremities for activities such as gripping, gross  
11 manipulation, and fine manipulation.” (JS 5.) Plaintiff also notes medical records  
12 that document his reports of pain. (JS 5-6.) However, the ALJ properly found that  
13 Plaintiff’s allegations were “not entirely credible” (AR 19), and the ALJ was  
14 permitted to disregard Plaintiff’s subjective complaints in making his findings. *See*  
15 *Stenberg v. Comm’r Soc. Sec. Admin.*, 303 F. App’x 550, 552 (9th Cir. 2008) (after  
16 an ALJ found a claimant not credible, “he was not required to include limitations  
17 that she claimed in reliance solely on her subjective reports of pain”). The ALJ  
18 properly considered the objective medical evidence and determined that these  
19 conditions were non-severe. *See Ukolov v. Barnhart*, 420 F.3d 1002, 1005-06 (9th  
20 Cir. 2005) (ALJ committed no legal error in finding no impairment because,  
21 “[r]egardless of how many symptoms an individual alleges, or how genuine the  
22 individual’s complaints may appear to be, the existence of a medically determinable  
23 physical or mental impairment cannot be established in the absence of objective  
24 medical abnormalities; i.e., medical signs and laboratory findings . . . .” (quoting  
25 Social Security Ruling 96-4p, 1996 WL 374187, at \*1-2)).

26 The ALJ concluded that Plaintiff has multiple severe physical impairments  
27 that would limit Plaintiff to a reduced range of medium work, as stated in the RFC.  
28 (AR 25.) The ALJ noted that multiple exams mentioned only Plaintiff’s upper

1 extremities, and references to his cervical spine and left knee are intermittent. (*Id.*)  
2 The ALJ noted that the record does not indicate the need for any limitations for  
3 Plaintiff's obesity or mental impairments. (*Id.*) The ALJ therefore found that there  
4 was support for limitations based on Plaintiff's physical impairments, but no  
5 support for any severe mental impairment. (*Id.*)

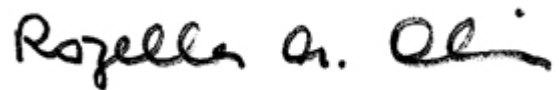
6 In sum, the Court finds that the ALJ's RFC assessment is supported by  
7 substantial evidence. *See Arrieta v. Astrue*, 301 F. App'x 713, 715 (9th Cir. 2008)  
8 (finding that substantial evidence supported the RFC determination when the ALJ  
9 properly evaluated the opinion evidence and relied on supporting medical reports  
10 and testimony).

11 **V. CONCLUSION**

12 IT IS ORDERED that Judgment shall be entered AFFIRMING the decision  
13 of the Commissioner denying benefits.

14 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
15 Order and the Judgment on counsel for both parties.

16  
17 DATED: January 29, 2018



18 ROZELLA A. OLIVER  
19 UNITED STATES MAGISTRATE JUDGE

20 **NOTICE**

21 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,**  
22 **LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**